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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,761	07/02/2003	Lishan Aklog	FLEX-001	7167

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CHRIS A. CASEIRO
VERRILL DANA, LLP
ONE PORTLAND SQUARE
PORTLAND, ME 04112-0586

EXAMINER

PREBILIC, PAUL B

ART UNIT	PAPER NUMBER
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3738

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

JP

Office Action Summary

Application No.

10/613,761

Applicant(s)

AKLOG, LISHAN

Examiner

Paul B. Prebilic

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-63 is/are pending in the application.
4a) Of the above claim(s) 5,14-16,18,19,21-23,25,26,29-44,50,54 and 58-62 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-4,6-13,17,20,24,27,28,45-49,51-53,55-57 and 63 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

Election/Restrictions

Claims 5, 14-16, 18, 19, 21-23, 25, 26, 29-44, 50, 54, and 58-62 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions or species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in paper filed in December 2004.

Terminal Disclaimer

The terminal disclaimer filed on July 13, 2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of patent application 10/884,015 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 6, 7, 9-13, 17, 20, 24, 27, 45-48, 51-53, 55, 56-57, and 63 are rejected under 35 U.S.C. 102(e) as being anticipated by Tremulis (US 7,125,421). Tremulis anticipates the claim language where the features of minimized leaflet contact, blood flow turbulence, and blood flow obstruction are not well defined in the

specification (see paragraph [0052] on page 16) such that they are considered to be broadly understood in view of the many and diverse embodiments disclosed therein; see Figures 13A and 13B as well as column 8, lines 47-64. The restraining structures as claimed are those that extend into the ring interior to prevent valve prolapse.

With regard to claim 3, the restraining structures of Tremulis must at least be semi-rigid in order to provide support for the leaflets.

With regard to claims 6 and 7, Nitinol and superelastic materials are inherently elastic and flexible materials to the extent required by the claims; see column 7, line 41 et seq.

With regard to claim 11, Figure 13B shows restraining portions extending from one portion to an adjacent portion thereof so the claim language is considered fully met.

With regard to claim 46, Figure 13B reads on the claim language where the anterior portion is the top two sections or clover leafs of the structure.

Claims 1-4, 6, 7, 9-13, 17, 20, 24, 27, 28, 45-48, 51-53, 55-57, and 63 are rejected under 35 U.S.C. 102(e) as being anticipated by Streeter (US 2006/0247492). Streeter anticipates the claim language where Figures 9 and 10 show rings with restraining members extending across the middle thereof; see also paragraphs [0029] to [0031].

With regard to claim 3, the Applicant is directed to paragraph [0025].

With regard to claim 28, Figure 10 looks D shaped such that the claim language is considered fully met.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8 and 49 are rejected under 35 U.S.C. 102(e) as anticipated by Tremulis (US 7,125,421) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Tremulis (US 7,125,421) alone. Tremulis discloses making the rings of ceramic materials which are considered inherently rigid to the extent claimed.

Alternatively, one may not consider ceramic materials inherently rigid unless explicitly stated as such. However, since the degree of rigidity is not set forth and since ceramics are known to be rigid being defined as "*a hard brittle heat-resistant material made by firing a mixture of clay and chemicals at high temperature*" (MSN Encarta Online Dictionary, definition number 1), the Examiner asserts that if there is a difference between the rigid material claimed and the ceramic material of Tremulis, it is only slight. For this reason, the Examiner asserts that the use of a rigid material in the Tremulis invention is at least obvious over Tremulis alone.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Applicant should specifically point out the support for any amendments made to the disclosure, including the claims (MPEP 714.02 and 2163.06). Due to the procedure outlined in MPEP 2163.06 for interpreting claims, it is noted that other art may be applicable under 35 USC 102 or 35 USC 103(a) once the aforementioned issue(s) is/are addressed.

Applicant is respectfully requested to provide a list of all copending applications that set forth similar subject matter to the present claims. A copy of such copending claims is respectfully requested in response to this Office action if the application is not stored in image format (i.e. the IFW system) or published.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Paul B. Prebilic whose telephone number is (571) 272-4758. He can normally be reached on 6:30-5:00 M-Th.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Paul B. Prebilic
Primary Examiner